



To: House Judiciary Committee
From: Kimberly Buddin, ACLU of Michigan
Date: September 9, 2020
RE: HB 5844, 5855, 5856, and 5857- Mandatory minimum jails
Position: Support

The ACLU of Michigan supports HB 5844, 5855, 5856, and 5857 to eliminate several mandatory jail sentences. Mandatory minimum sentences reduce the sentencing discretion of judges, create racial disparities, and give prosecutors too much leverage, which they can use to strong-arm defendants out of their constitutional rights and force them to plead to harsh sentences. These reforms are a necessary step towards reducing mass incarceration and eliminating racial disparities in our criminal legal system. We support this legislation for the following reasons:

Because they shift enormous power to prosecutors, mandatory minimums do not have the intended impact.

Under mandatory sentencing laws, prosecutors have control over sentencing because they have total and unreviewable authority to decide what charges to pursue. In prosecutors' hands, the minimum transforms from a 'certain and severe sanction' to a tool for prosecutors to incentivize behavior and make judgment calls. This charging power can be used to cut deals, secure testimony against other defendants, and force guilty pleas where the evidence is shaky.

Mandatory minimums threaten due process principles because it eliminates required transparency in charging and sentencing decisions.

A prosecutor is not required to disclose their reasons for bringing or dropping a charge. Judges, on the other hand, typically must disclose their reasons for sentencing in the written, public court record, and aggravating factors can be contested by the defendant. See e.g., Justice Anthony Kennedy: "the trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open, and reasoned way."

Mandatory minimums create a powerful incentive for the perversion of justice.

A defendant faced with a plea deal of paying a fine or a risk of going to jail for up to 1 year if they decided to go to trial is likely to choose the former, no matter how weak the evidence. The threat of mandatory minimum penalties may cause people to give false information, to plead guilty to charges of which they may actually be innocent, or to forfeit a strong defense.

Sentences should be individualized, not one-size-fits-all.

Mandatory sentences don't allow judges to reduce a defendant's sentence based on any number of mitigating factors, including circumstances of the case or a person's role, motivation, or likelihood of repeating the crime. This approach to sentencing is unfair, treating similar defendants differently and different defendants the same. It is ineffective at reducing criminal behavior, because it is not consistently applied.

Mandatory minimums needlessly increase costs without improving public safety.

It is extremely expensive to introduce mandatory time for incarceration, which should only be done if there is a clear benefit to public safety. There is no evidence that there is a public safety benefit to mandating severe sentences across the board for certain crimes, regardless of circumstances. Indeed, the evidence shows that more severe sentences do not deter more effectively than less severe ones. By putting all discretion in the hands of prosecutor offices that may be actually rewarded for achieving numerous convictions for lengthy sentences, mandatory minimums ensure that public policy concerns, such as cost and ensuring a good 'public safety bang for the buck,' take a back seat. If there is a reason in a particular case to believe that a more severe sentence is warranted, the decision should be left to the judge, who has fewer incentives to ratchet up sentencing.

We urge this legislature to pass these reforms and continue to pass additional legislation implementing the recommendations from the Michigan Joint Task Force on Jails and Pretrial Incarceration.

Respectfully submitted,

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